

**NORTH MAIN STREET DEVELOPMENT PROJECTS ENVIRONMENTAL
SERVICES AGREEMENT**

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
SCS ENGINEERS**

THIS AGREEMENT for consulting services regarding the Midtown North Main Street Improvements ("Project") is made by and between respectively the City of Milpitas and the Milpitas Redevelopment Agency (hereinafter referred to for convenience only as "City") and SCS ENGINEERS ("Consultant") (together sometimes referred to as the "Parties") as of July 6, 2005 (the "Effective Date") in Milpitas, California.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Consultant's Duties and Services attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

1.1 Term of Services. The term of this Agreement shall begin on the Effective Date and shall end on April 30, 2006, and Consultant shall complete the work described in Exhibit A - Part 1, (Design and Bidding Services) by that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8. The parties will discuss an amendment to this Agreement to complete the work described in Exhibit A - Part 2 (Construction Services) prior to the expiration of the current term (for Part 1.) Consultant shall not be responsible for delays caused by the City or by causes beyond the Consultant's reasonable control as determined by the City.

1.2 Standard of Performance. The Consultant: (a) shall fulfill and perform all of its obligations under this Agreement, and (b) shall perform all professional services in the manner specified by this Agreement and in accordance with the currently prevailing standards of professionals with the level of experience and training similar to Consultant working in the geographical area in which Consultant practices its profession. Consultant represent themselves as a experienced practitioner in the field of work for the scope of this project and are responsible for performing all work appropriate and necessary to produce a bid package suitable for competitive public bidding as required by the scope of work of this contract.

Consultant acknowledges that it is their obligation to prepare (a) bid package(s), including plans, specifications, and other bid documents; suitable for bidding under the Public Contracts Code. Consultant further acknowledges that Consultant understands the standard of care required of bid packages advertised by public agencies for competitive bidding. The City is relying upon the Consultant's professional skill and experience to prepare the bid package(s). The Consultant shall produce a 100% Construction Documents ready for bid within the schedule, and prior to bidding. The Consultant will be considered to have used due professional care to meet the Standard of Performance if construction change orders, made necessary due to the Consultant's performance, do not exceed 5% of the total construction bid price. City shall notify the Consultant upon receiving information or entering into dialogue that may result in a construction change order. The City and Consultant shall actively participate and agree to any resolution resulting in a construction change order. Should the Consultant not be notified of a potential construction change order as specified herein, any such resulting

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change order may not be used to evaluate the Consultant's Standard of Performance based on construction change orders.

1.3 Assignment of Personnel. Consultant shall assign those persons designated in Exhibit C to perform services pursuant to this Agreement. Consultant shall not remove or reassign any designated personnel from the Project without the prior written consent of the City, which City shall not unreasonably withhold. The Consultant shall be allowed to substitute personnel without prior City approval if a designated person leaves the Consultant's employ or is otherwise physically unable to perform the job duties. The new person shall be at least of equal status and experience to the designated person. If City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any designated persons, Consultant shall, upon receiving notice from City of such desire of City, reassign such person or persons. The persons designated in Exhibit C represent the minimum staff to be provided by Consultant. Consultant shall assign additional persons to perform services if they are necessary to meet all of Consultant's obligations under this Agreement, including but not limited to the quality and timeliness of performance required by Section 1.2 above. The Consultant shall keep the City informed of personnel assignments related to this project. City may require Consultant to provide monthly labor reports if City feels that appropriate personnel are not being assigned to project. The Consultant shall disclose to the City in writing any known contractual relationship Consultant has that would favor a supplier or contractor or would create a conflict of interest.

1.4 Time.

Consultant shall devote such resources, money, personnel, and time to the performance of all of its obligations under this Agreement as may be reasonably necessary to fulfill those obligations, including but not limited to the standard of performance provided in Section 1.2 above. Consultant shall complete each phase by the date scheduled in Exhibit A.

Section 2. COMPENSATION.

City hereby agrees to pay Consultant a lump sum amount of Three hundred thirty-five thousand nine hundred and fourteen Dollars (\$ 335,914), for all work set forth in Exhibit A, Part 1; plus all Reimbursable Expenses incurred in performing the work, as described in Exhibit B, not to exceed four thousand eighty-six dollars (\$ 4,086); plus Additional Services, if any, not to exceed five thousand Dollars (\$ 5,000). Total Compensation shall not exceed three hundred forty-five thousand Dollars (\$ 345,000) City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement. Consultant shall immediately disclose to the City in writing any compensation received by Consultant from persons other than the City if that compensation relates to the Project.

2.1 Completion On Schedule.

Consultant and City agree that the Consultant has developed both the time schedule and the fee schedule for each phase of work described in Exhibit A. Therefore, the Consultant shall complete each phase on schedule and City shall pay the full lump sum for each phase, which is divided into a 95% Fee for completion and a 5% Fee for early or on-time completion. On-time completion is completion by the scheduled date for that phase. The Consultant shall not be held responsible for schedule delays resulting from regulatory agencies or other outside

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parties beyond the Consultant's control. If the Consultant completes work ahead of schedule this will provide float in the schedule as a Consultant resource, but will not change the scheduled dates of subsequent tasks. If the Consultant completes a phase after the scheduled date it does not change the scheduled dates for subsequent tasks except as provided for herein.

If any phase is completed late Consultant forfeits the 5% Fee amount. The Consultant is expected to add resources and take whatever measures are necessary to accelerate the work to meet the next phase's scheduled date. If the Consultant recovers the schedule by completing the next or subsequent tasks by their scheduled dates, any otherwise previously forfeited 5% Fee amounts will be paid to Consultant.

If any phase is not completed within one week after the scheduled date, the City may subtract the amount of seven thousand dollars (\$7,000.) per week, from the 95% Fee as liquidated damages for each week that completion of the phase exceeds the scheduled date. Each week paid, as liquidated damages, will add a week to the remaining phase's scheduled dates.

2.2 Invoices

Consultant shall submit invoices not more often than once a month during the term of this Agreement, based on the percentage of project phase completion prior to the invoice date, as shown in Exhibit B. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- A tabulation of Reimbursable Expenses for the billing period;
- Total invoice amount, total billed to date, and remaining amounts, for each phase.
- Certification of the lack of compensation on the Project other than compensation from the City;
- False Claims Act certification form;
- The Consultant's signature.

2.3 Monthly Payment

City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant. The Consultant shall provide reasonable information for the City to evaluate monthly progress billing.

2.3.1 Retention

City shall retain 10% of each approved payment and withhold that amount. The City shall release retention accrued through the end of the bidding phase after the Project is approved for bidding by the City Council. If the project is not approved for bid within 60 days of Consultant's submission of bid documents to the City, and if the bid documents are found to be reasonably acceptable by the City, City will release full retention.

2.3.2 Additional Withholding

City shall have the right to withhold an amount from any payment, including final payment, to compensate the City for costs, fees, damages and other amounts incurred by the City to the extent that such City's incurrence of said amounts was caused, in whole or in part, by (a) the willful misconduct, breaches of this Agreement, negligent violations of law, or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, (b) acts for which they could be held strictly liable, (c) or as provided for elsewhere in this contract.

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2.3.3 **Total Payment.** City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. If Consultant performs services pursuant to the City's request (see Section 2.9 below) that are not within the scope of Exhibit A, then Consultant shall be paid for those services based on the hourly rates for additional services specified in Exhibit B.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a phase or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed amendment.

2.5 **Additional Services.** A contingency amount of five thousand dollars (\$ 5,000) is included in the contract that may not be used without express written authorization by the City for additional services. Fees for approved work performed by Consultant on an hourly basis shall not exceed the amounts shown on the following fee schedule attached hereto as Exhibit B. These fees shall apply through the end of the calendar year in which this Agreement is signed and shall be adjusted each year to be the lesser of the Consultant's standard billing rates or an increase no more than the change in San Francisco-Oakland-San Jose All-Urban Consumers Price Index.

2.6 **Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B, and shall not exceed four thousand eighty-six dollars (\$ 4,086). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement. This amount shall not be exceeded without written authorization of the City and an appropriate increase in the Reimbursable Expense Budget. Travel, food, and accommodations are not reimbursable expenses.

2.7 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.8 **Payment upon Termination** If the City terminates this Agreement without cause, pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. If the City terminates this Agreement for cause the City shall not be required to make any further payment to the Consultant, and Consultant forfeits all accrued retention to-date and the current month's payment as liquidated damages for the loss to the City to administer the completion of the work by others.

2.9 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the City. Consultant shall notify the City in writing and receive written authorization to proceed, prior to doing any work that Consultant asserts is beyond the scope of work of the present contract phase. Consultant shall not delay in commencing the work after receiving authorization to proceed. Consultant acknowledges that timely performance of services is paramount to avoid delay to the Project and damages to the City.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide policies to City that meet the

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requirements of this section. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of insurance shall be included in the Consultants fees, except for cost of additional insurance that may be provided by the City. Consultant shall not allow any subconsultant to commence work on any subcontract until Consultant has obtained proof that they are adequately covered by all necessary and prudent insurance. The Consultant shall submit the required certificates of insurance or policies upon submitting an executed original of this Agreement.

4.1 Workers' Compensation. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned, non-owned, or hired automobiles, to the extent that they exist.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or GL 0002 [check form #s] (ed.1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Company-owned automobiles, if any shall be covered at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) or comparable current coverage. Code 1. No endorsement shall be attached limiting the coverage. Consultant shall notify City if any company owned vehicles exist, or if there are any changes in ownership of vehicles owned by the company.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

4.3 Professional Liability Insurance.

4.3.1 General requirements. Consultant, within the fee described in Exhibit B shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering

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the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$300,000 per claim. City may provide Owner Controlled Insurance or a wrap-around insurance policy. If City does not provide insurance, Consultant shall increase insurance limits up to five million dollars (\$5,000,000.) annual aggregate and City shall pay cost of additional premium to increase such insurance, as a separate cost amendment, to increase such insurance.

- 4.3.2 Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:
- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, as long as it is reasonably available at that time, to the extent provided in the fee structure of Exhibit B.
 - c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
 - d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of work under this Agreement.

4.4 All Policies Requirements.

- 4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.
- 4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with complete certificates of insurance and certified copies of all policies, including complete certified copies of all endorsements. All copies of certificates, policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf.
- 4.4.3 Notice of Reduction in or Cancellation of Coverage.** An endorsement shall be attached to all insurance obtained pursuant to this Agreement stating that coverage shall not be suspended, voided, canceled by either party, except after thirty (30) days' prior written notice by mail has been given to the City. If any coverage required by this section is reduced, limited, cancelled, or materially affected in any other manner known to Consultant, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than ten (10) working days after Consultant is notified of the change(s) in coverage.
- 4.4.4 Additional insured; primary insurance.** Except for the professional liability and workers' compensation policies, a certified endorsement at least as broad as Insurance Services Office form number CG 20 10 (11/85 ed.) shall be attached to all policies stating that the City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant, as applicable; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant in the course of providing services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.

A certified endorsement shall be attached to all policies stating that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

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- 4.4.5 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers, which authorization shall not be unreasonably withheld.

- 4.4.6 Subconsultants.** Consultant shall include all subconsultants as insureds under its policies or shall furnish separate certificates and certified endorsements for each subconsultant.

- 4.4.7 Variation.** The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

- 4.5 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement, for cause.

Section 5 INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES

Consultant shall indemnify, defend and hold harmless the City and its officials, officers, employees, agents (other than the construction contractor(s)), and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by (a) the willful misconduct, breaches of this Agreement, negligent violations of law, or negligent acts or omissions of Consultant or its employees, subconsultants, or agents, or (b) acts for which they could be held strictly liable. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers, and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance policies and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause.

This indemnification and hold harmless clause shall apply to any such damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

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If Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Consultant No Agent.** Except as City may specify in writing in this Agreement or elsewhere, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent or to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and any subconsultant shall use due care to comply with all laws applicable to the performance of the work hereunder. Consultant shall exercise due care that the design and bid documents comply with all laws, regulations, and good practices. Consultant's activities in conducting business shall comply with all applicable laws and regulations.
- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits.** Consultant represents to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of any nature whatsoever that are legally required to practice their respective professions. Consultant represents to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, or bidder for a

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subcontract. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in all subcontracts.

Section 8. TERMINATION AND MODIFICATION.

8.1 Termination. City may terminate this Agreement at any time with or without cause upon written notification to Consultant. In the event of termination without cause, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement. City understands that incomplete design work and related calculations, and documents may not be suitable for use

If any dispute exists between Consultant and City, Consultant must continue to perform all of its services. City agrees to participate in non-binding mediation if a dispute cannot be resolved informally by the Parties. Consultant must submit its disagreement in writing to the City along with any relevant documentation.

8.2 Extension. City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall be specified in writing by the City. Consultant understands and agrees that the extension, in and of itself, shall not obligate the City to provide Consultant with compensation beyond the amounts provided for in this Agreement.

8.3 Amendments. The parties may amend this Agreement only by a writing signed by all the parties.

8.4 Assignment and Subcontracting. City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's professional competence, experience, and professional knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subconsultants noted in the proposal, without prior written approval of the City.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, the City shall give the Consultant notice and reasonable opportunity to correct the breach. If the Consultant fails to correct the breach to the City's satisfaction, City's remedies shall include, in addition to all other remedies available to City under this Agreement and law, the following:

8.6.1 Terminating the Agreement;

8.6.2 Retaining the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement, including rights to use any designs, concepts, or work;

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- 8.6.3 Hiring a different Consultant to complete the work described in Exhibit A not finished by Consultant, or City staff may complete such work; and/or
- 8.6.4 Terminating the Agreement for any breach shall require forfeiture by the Consultant to any claim to all retention held by the City to-date, and the current month's payment otherwise owed to the Consultant and any other amount otherwise owed to Consultant by City under this Agreement.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All significant work products, including drawings and specifications, reports, maps, models, charts, studies, surveys, and photographs, plans, studies, specifications, records, files or any other documents or materials in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City in the normal course of work or upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Consultant agrees that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of City.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor at the request of City, or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Mediation.** If a dispute arises out of or is related to this Agreement, or the breach thereof, and if the said dispute cannot be settled through direct discussions, the City and the Consultant, as parties to this Agreement, agree to first endeavor to settle this dispute in an amicable manner by mediation through a mutually agreed-to mediation service before having recourse to a judicial forum.
- 10.2 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.3 **Venue.** If either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.

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- 10.4 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.5 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.6 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.7 **Use of Recycled Products.** Consultant shall endeavor to prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.8 **Force Majeure.** The Consultant shall be excused from performing any obligation or undertaking provided in this Agreement in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by an act of God, fire, earthquake, flood, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of governmental or civil or military or naval authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the respective control of the Consultant.
- 10.9 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et. seq.*
- Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et. seq.*
- Consultant hereby states that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant states that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et. seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.
- 10.10 **Solicitation.** Consultant agrees not to solicit business at any meeting, or focus group, related to this Agreement, either orally or through any written materials.
- 10.11 **Contract Administration.** This Agreement shall be administered by the Assistant City Engineer or designee, who shall act as the City's representative. All correspondence shall be directed to or through the Assistant City Engineer or designee.
- 10.12 **Notices.** Any written notice to Consultant shall be sent to:

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Consultant Name: SCS Engineers
Address: 6601 Koll center Parkway, Suite 140
Pleasanton, CA 94566
Attention: Lenard Long

Any written notice to City shall be sent to:
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035-5411
Attention: Greg Armendariz

with Copy to:
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035-5411
Attention: Mark Rogge

10.13 Professional Seal. In accordance to licensing regulations and codes, work shall have the professional seal and signature of the licensed professional responsible for the work. Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. Submittals to the Building Department shall be stamped as "building permit submittal" and stamped and signed as required by the Building Department's rules.

10.14 Integration; Incorporation. This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.

10.15 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The following exhibits are included:

Exhibit A	Scope of Consultant's Duties and Services
Exhibit B	Compensation Manner and Amount, Reimbursables, Estimated Payment Schedule, Hourly Rates
Exhibit C	Personnel, The Professional Team
Exhibit D	Certificate of Insurance, Certificate of Workers Compensation Insurance
Exhibit E	Invoice or Claim Declaration

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The Parties have executed this Agreement as of the Effective Date.

CITY OF MILPITAS

CONSULTANT

Charles Lawson, Interim City Manager

Principal/President

MILPITAS REDEVELOPMENT AGENCY

Charles Lawson, Interim Executive Director

Principal/Secretary,
Chair Board of Directors

Attest:

Mary Lavelle, City Clerk/Agency Secretary

Approved as to Form:

Steven T. Mattas, City Attorney/Agency Counsel

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EXHIBIT A

Consultant's Duties and Services

SECTION 4. PROJECT WORKPLAN

Several environmental assessments have been completed by others and they need detailed review; and in some cases they need to be supplemented with additional assessments. The scope of work will be an iterative process as discoveries are made and evaluations are performed. The attached Table 2 provides a summary of our current understanding of each property with remaining environmental issues and outlines our recommendation for additional study areas. Figure 3 provides a detailed outline of the preliminary workplan elements/tasks and the following section provides a narrative of significant work scope items. It is recognized that some of the tasks outlined in Figure 3 may be eliminated or expanded after detailed project review and meetings with the City's team.

1. Environmental Site Assessments

Phase I Environmental Site Assessments

The usual purpose of a Phase I is to identify environmental conditions on a given site, such as a release of hazardous waste, which may impact continued use or planned development of the property. Our Phase I assessments are tailored to meet our client's needs and include:

- A site and site vicinity reconnaissance.
- Regulatory records review (leaking tank and "Superfund" sites, etc.).
- Historical land use records review (air photos, historical maps, etc.).
- Geologic, hydrogeologic, and site setting research.
- Report preparation and project management.

Over recent years there has been an increasing interest in expanding the scope of Phase I environmental site assessments to include surveys for asbestos, lead-based paint, and mold. SCS is able to provide asbestos, lead-based paint, and mold survey, assessment, and decontamination/remediation services within the California practice.

Mr. Clements P.G., is responsible for overseeing the Environmental Assessment and has conducted, managed, or peer reviewed over 1,000 Phase I and Phase II projects in California. Because of our expertise in this area, SCS is routinely asked to review the work of others and to "fix" the problems created by inexperienced personnel conducting Phase I's or inadequately scoped projects. These problems often relate to an unwary client accepting a low bid, only to "pay" later.

Asbestos, Lead-Based Paint, and Mold Surveys

SCS (Mr. Udo Steinberger, AHERA certified) will oversee/and or conduct a survey for asbestos containing materials (ACMs) and lead-based paint (LBP) at the Site structures. The inspection will be conducted by a State of California Division of Occupational Safety and Health (Cal-OSHA) certified Site Surveillance Technician, who will be overseen by an experienced Cal-OSHA certified asbestos consultant, and the inspection will be performed in accordance with current California and Federal regulations. Cal-OSHA certified asbestos consultants are also accredited under the AHERA program administered by the U.S. EPA.

In those areas suspected of containing ACMs, bulk samples will be collected for laboratory analysis. The analysis of bulk material samples for asbestos content shall be performed by Polarized Light Microscopy (PLM) with dispersion staining techniques as required by U.S. EPA Method 600/R-93/116. The PLM



analysis will be conducted by a laboratory that is a participating member of the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute for Standards and Technology (NIST).

In areas where loose or flaking paint systems are observed, paint chip samples will be collected and analyzed for total lead in accordance with EPA methods. SCS personnel will also observe and note the location and condition of suspected ACMs and lead-based paint. X-ray Fluorescence (XRF) techniques would be used expedite the lead survey process.

Mold surveys are conducted by Michael Geyer, CIH, P.E., who has been practicing in the mold area for 6 years and serves as an expert witness on many occasions. Because Mr. Geyer is an engineer, he has a good understand of how buildings are constructed and where water enters to create mold problems. In addition, once the problem is identified, he confidently develops plans and specifications for abatement.

Phase II Environmental Site Assessments

A Phase II environmental site assessment will be required to assess the impacts from a leaking underground storage tank at 130 Winsor and may be required as part investigations for the Public Library and former City Corporate yards. We are experienced in the unique requirements of the California Department of Toxic Substances Control (DTSC), including the Preliminary Endangerment Assessment (PEA) process and related site investigations and risk assessment, and Interim Guidance for sampling former agricultural fields (which is intended for school sites).

The usual objective of a Phase II is to assess the horizontal and vertical extent of chemicals in soil and groundwater. This allows the potential risk at a given site to be assessed and allows the City to decide if remediation is needed, as well as providing valuable information for the design of a remediation system, if needed. The scope of a Phase II often includes:

- Project planning, including the preparation of regulatory-required workplans and health safety plans, project scheduling, and subcontractor management.
- Drilling and sampling of soil borings, and design, permitting, and installation and sampling of groundwater monitoring wells.
- Conducting an exploratory excavation to assess the extent of chemicals in the subsurface.
- Conducting soil vapor survey to assess the extent of volatile chemicals (solvents, petroleum hydrocarbons, etc) in the subsurface.
- Laboratory analysis of soil and groundwater samples.
- Data analysis, tables, illustrations, text preparation, and project management.

We have conducted several hundred Phase II projects in the Bay Area. Our Phase II work is conducted in accordance with all applicable regulations and guidelines including those of the SCVWD, DTSC, San Francisco Bay Regional Water Quality Control Board (SFBRWQCB), and other local, state, and federal agencies as required.

Environmental Samples

SCS has established multi-year relationships with several environmental testing laboratories. All laboratories are state-accredited and have worked with SCS on redevelopment projects. The laboratories we use are both mobile and fixed-base, and provide a full range of analytical testing services necessary to support our environmental assessments. EPA and State of California methods are used for analytical testing and all laboratories used maintain a quality assurance/quality control program to maximize the accuracy and precision of sample results.



2. Geotechnical Analysis

SCS has several geotechnical engineers on staff and we will perform investigation as conditions warrant. The scope of the geotechnical investigations will be tailored to meet the specific needs of each site, proposed building loads and geologic conditions. The scope will consist of subsurface exploration, laboratory testing, engineering analysis and preparation of a geotechnical report for use in design of earthwork, utilities, foundations, slabs-on-grade and pavements. We have ample local resources available to ensure timely implementation of the proposed scope of work.

The field exploration program could include geotechnical test borings, exploratory test pits or trenches, cone penetrometer tests, seismic refraction surveys, and other techniques appropriate to site conditions and the scope of the development. Field work is conducted under the direct supervision of a registered, professional engineer or geologist who will log the test borings, test pits, and obtain samples for examination and laboratory testing.

SCS staff of professional engineers and certified engineering geologists analyzes each element of the field and laboratory program to use as a basis for design recommendations. We have a full suite of state-of-the-art computer programs and drafting software needed to prepare drawings and calculations for a range of geotechnical and geological issues encountered in California. The field and laboratory data, and engineering analyses results, are summarized in a complete geotechnical report that includes the detailed geotechnical criteria needed for project design.

During construction, SCS will subcontract field testing to Kleinfelder Inc. who provide field observations and soil testing during site preparation, demolition and other preparatory work. Kleinfelder staff of experienced geotechnical technicians have the background to evaluate conditions exposed in the field and compare them with the subsurface conditions anticipated based on the subsurface data developed during the geotechnical investigation. All technicians are equipped with both nuclear moisture-density gauges and sand cone volume tools so that the most accurate field tests for site soil conditions can be performed. Field personnel will be supported by a local, experienced, fully equipped laboratory so that necessary maximum density test results, as well as measurements of material quality, are available for use in the field in a timely manner.

3. Health and Safety Program

A major component of SCS's health and safety program is the site health and safety plan; safety comes first in our organization. A site-specific plan is prepared for all tasks where hazardous materials and/or hazardous situations might be encountered. The SCS Health and Safety Program is overseen by SCS's Certified Industrial Hygienist (CIH) and Certified Safety Professional (CSP), Michael Geyer. SCS maintains an ongoing health and safety program that consists of medical monitoring, safety training, site-specific and community health and safety plans, and operating procedures. All of our field personnel and professional staff have 40-hour health and safety training under OSHA 29 CFR 1910.120 (hazardous waste operations), and are certified to perform work corresponding to Level A and lower protection.

A health and safety plan for work conducted at the Site and workers within the "exclusion zone" is required pursuant to the regulations found in 29 Code of Federal Regulations (CFR) Part 1910.120 and California Code of Regulations (CCR), Title 8, Section 5192. Therefore, a health and safety plan will be prepared for the proposed scope of services and will outline the potential chemical and physical hazards that may be encountered during drilling and sampling activities. The appropriate personal protective equipment and emergency response procedures for the anticipated site-specific chemical and physical

hazards will be detailed in this plan. SCS and contracted personnel involved with the proposed field work will be required to read and sign this document in order to encourage proper health and safety practices.

4. Health Risk Assessment and Fate and Transport Modeling

The risks associated with the potential exposures or the fate and transport of chemicals will be quantified. The risks to be considered include inhalation, dermal contact, and potential ingestion of contaminants or their by-products, and the likelihood or feasibility of realizing these exposures for the current and future site uses. Health Risk Assessments (HRAs) and fate and transport modeling include:

- Analysis of selected soil samples for appropriate physical parameters.
- Review of the available data to assess the extent of soil impact and possible impacts to groundwater beneath the site.
- Identification of potential migration pathways.
- Identification of current and future receptors for subsurface contaminants.

This information is then incorporated into a fate and transport model to assess potential human health risk and threat to groundwater. The natural attenuation properties of the soil materials that may contain, control, or inhibit the movement of contaminants through the subsurface are estimated. Based on this information, a reasonable and defensible model is developed for the subsurface soil which will be described in terms of physical, chemical, and other numerical properties along the potential contaminant migration pathways. Once the risks are known, mitigation measures and/or institutional controls can be established to limit exposure to receptors or the environment.

The fate and transport modeling/HRA will generally follow guidelines included in the Johnson and Ettinger methodology and the latest version of the DTSC's SAM Manual, and other relevant guidance documents adopted by the DTSC and the EPA for establishing risk-based remediation goals.

We will consult with the City regarding the impacts and risks to determine how much risk can be tolerated. To the extent practical, we understand that clean closure is preferred over risk-based closure, because of public perceptions.

5. Risk-Based Corrective Action

Mr. Damian PhD will lead our risk assessment studies and he has been an active participant in developing risk-based corrective action (RBCA) standards including participation in the ASTM committee that developed the RBCA standard. SCS has been successful with this approach and has obtained closure on many sites with free product on groundwater using RBCA. Also, if fate and transport modeling is anticipated, SCS will collect and archive samples for appropriate analysis to support contaminant migration (e.g., porosity, total organic carbon, conductivity) or remediation by natural attenuation estimates.

6. Risk Management Plan

Based on the site investigations, risk assessment results, and potential exposure pathways to receptors, a Risk Management Plan (RMP) would be prepared for abatement or mitigation of contaminants of concern. The RMP is based on compilations of scientific information, statistical analysis, engineering, regulatory knowledge, and redevelopment foresight put into a plan for practical application. The RMP will:



- Comply with applicable federal, state, and local standards for management,
- Be protective of human health and the environment,
- Control the source of releases and residuals, so as to reduce or eliminate further impacts of hazardous constituents that may pose a threat to human health and the environment.

As part of the remedy selection, the City would implement institutional controls to further reduce the potential for exposure to residual impacted soil and/or groundwater. The plan would also include bid packages for the removal and disposal of any hazardous material to the extent practical and provide engineering controls (such as encapsulation) for areas/materials that cannot reasonably be clean-closed. Operation and maintenance programs, including groundwater monitoring procedures would be included in the RMP.

7. Preparation of Community Health and Safety Plans

For some situations (e.g., a remediation program in an urban setting), a community health and safety program and plan are required. SCS is well versed in the preparation of these plans. Typical plan elements include: public notifications, community hazard assessment, action level determination, method and frequency of monitoring, and a sensitive receptor survey. We have prepared and received approval for a number of these plans from both local and state agencies.

8. Storm Water Pollution Prevention Plan

Construction activities will require the City to develop a Storm Water Pollution Prevention Plan (SWPPP) that complies with the requirements of the General Storm Water Discharge Permit issued by the State Water Resources Control Board. Storm water discharges for the project, however, are formally regulated by the SFBRWQCB.

The SWPPP provides an inventory of activities that can generate storm water runoff discharges. The Plan also describes Best Management Practices (BMPs) for minimizing the discharge of any pollutants into the storm drain system. Management of construction water and other non-storm water discharges is another element of the SWPPP. The storm water pollution prevention, monitoring, and reporting activities will include the following tasks:

- BMPs,
- Monitoring of construction water management activities,
- Inspection of the storm water management and discharge activities, and
- Preparation of a storm water pollution prevention and discharge monitoring report for submittal to the SFBRWQCB.

9. Preparation of Corrective Action Plans

SCS regularly prepares Corrective Action Plans (CAPs) for projects that require specific remedial action and one is likely for the 130 Winsor Street Property. The CAP will generally summarize the results of previously conducted Phase I and Phase II environmental site assessments and health risk assessments (HRAs), and identify potential sensitive receptors and exposure pathways. The CAPs generally present a single cleanup method or a range of cleanup methods depending on the site and specific regulatory requirements, and propose cleanup goals. The CAP would consider the effects of various cleanup options on potential future land uses as well as the current land uses for properties where redevelopment is envisioned and future land uses are reasonably known.

10. Remedial Design

Because of our experience on public works projects, we understand the need to have plans and specifications complete enough to get the job done right, without surprises. SCS has extensive experience with both "traditional" and "cutting edge" remedial technologies for both soil and groundwater. We customize our remediation systems to meet our client's development goals. We are of the opinion that only after the extent of impact is defined and a cleanup level established may a remediation system be properly designed. Factors which must be considered in any remediation system or project include cost, difficulties of permitting, time of cleanup, and liability.

The least expensive remediation system may not be in the client's best interest if it will take 20 years to accomplish, will result in unacceptably high liability, or just plain doesn't work. As in all aspects of consulting, the needs of the client must be known and value engineering needs to be presented to clients for their effective decision making process. The SCS Team has been involved with hundreds of remediation projects, ranging from excavation and treatment to vapor extraction, as well as bioremediation and chemical oxidation. We believe our experience and philosophy allows us to review complex Phase II data, design, and cost, and/or put out to bid a system that will be cost effective and meet our client's needs.

Prior to implementing a remediation system such as pump and treat, vapor extraction, sparging or bioremediation, we may recommend that a feasibility or pilot test be conducted. This testing allows for a proper, cost-effective design of the system. For example, if sparging extraction appears to be a viable remediation system, a feasibility test will confirm this remediation method as well indicate such key design parameters as radius of influence of wells, estimated time to remediate soil, and allow for proper sizing and design of key remediation equipment, such as a blower and vapor effluent treatment (carbon, catalytic oxidizer, etc.). The typical remedial design process includes the following steps:

- Perform calculations and analyses to select and size the remedial measure,
- Evaluate alternatives; value engineering,
- Develop design drawings and scope of work for the selected remedial measure,
- Compile the Contract Documents and modify City's existing Contract Specifications, as needed,
- Prepare a cost estimate for the remediation project,
- Prepare any required additional technical specifications for the selected remedial measures or for site specific conditions,

SCS will perform the necessary calculations and analysis to produce a comprehensive project manual that will include detailed design drawings and technical specifications for City's review, agency permit applications, and public construction bidding. SCS will provide plans for review at 60 percent, and plans and specifications at 90 percent and 100 percent completion. The manual may include:

Design Drawings.

- Site Plan including building and well locations and elevations
- Process flow diagram
- Treatment system layout and sections
- Piping and instrument drawing
- Structural details for equipment pad and supports
- Mechanical details
- Electrical details
- Control details



Technical Specifications (CSI format):

- Site preparation and grading
- Asbestos, Lead-based paint and Mold Abatement
- Demolition
- Utility relocations
- Site restoration
- Fencing and security
- Hazardous materials handling and disposal
- Well installation
- Mechanical work
- Electrical work

11. Construction Management

Construction Management typically involves large dollar projects that will go out to public bid. The primary purpose of this phase of work will be to:

- Assist the City project manager to solicit bids for the project and prepare any necessary addenda to the Contract Documents,
- Assist the City project manager to review and evaluate the submitted bids, prepare responses to any bid protests, and select the successful bidder,
- Assist the City project manager to negotiate a contract with the successful bidder.
- Overseeing the contractor (see Section 3 Construction Management for additional details).

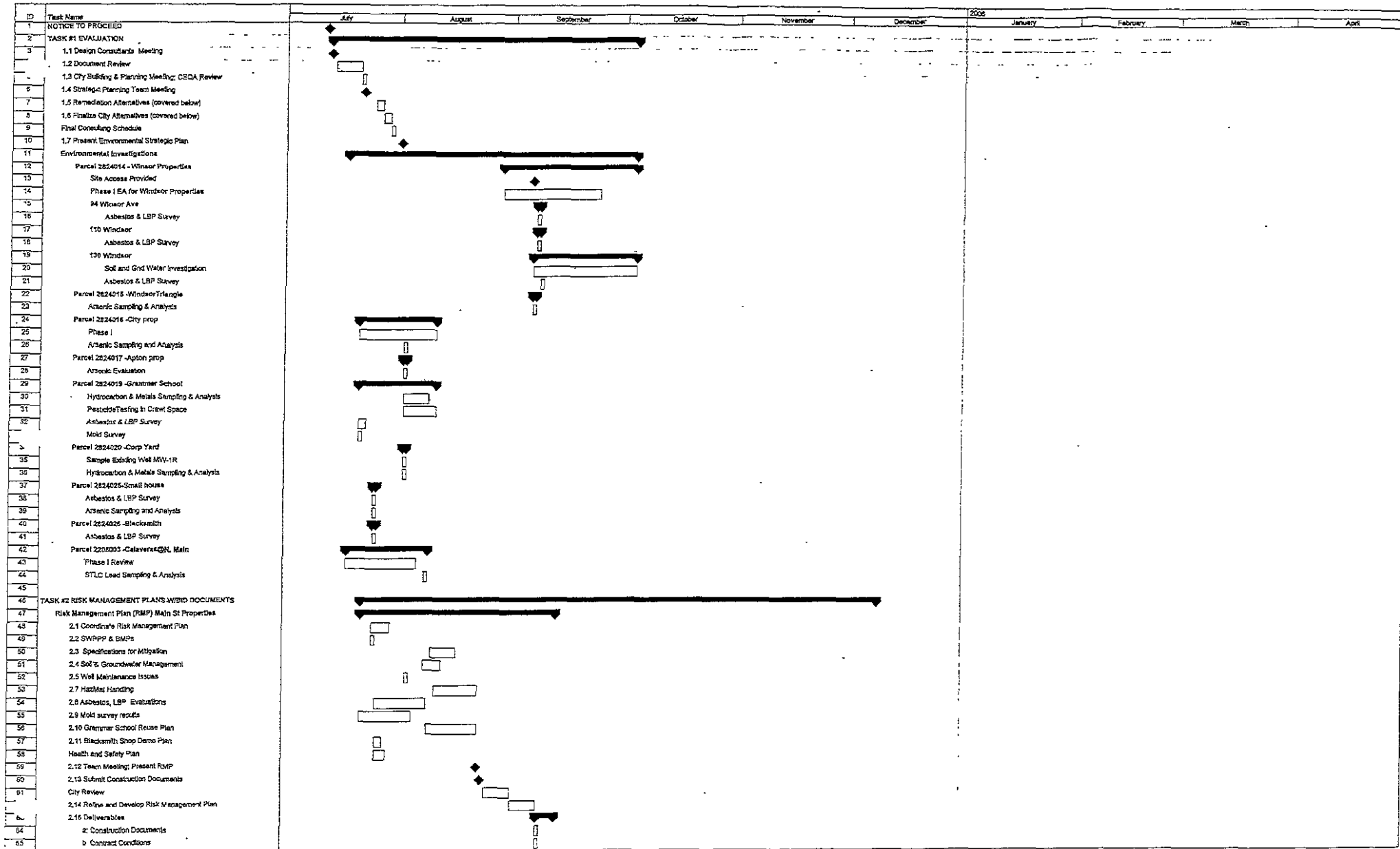
RELATIONSHIPS WITH REGULATORY AGENCIES

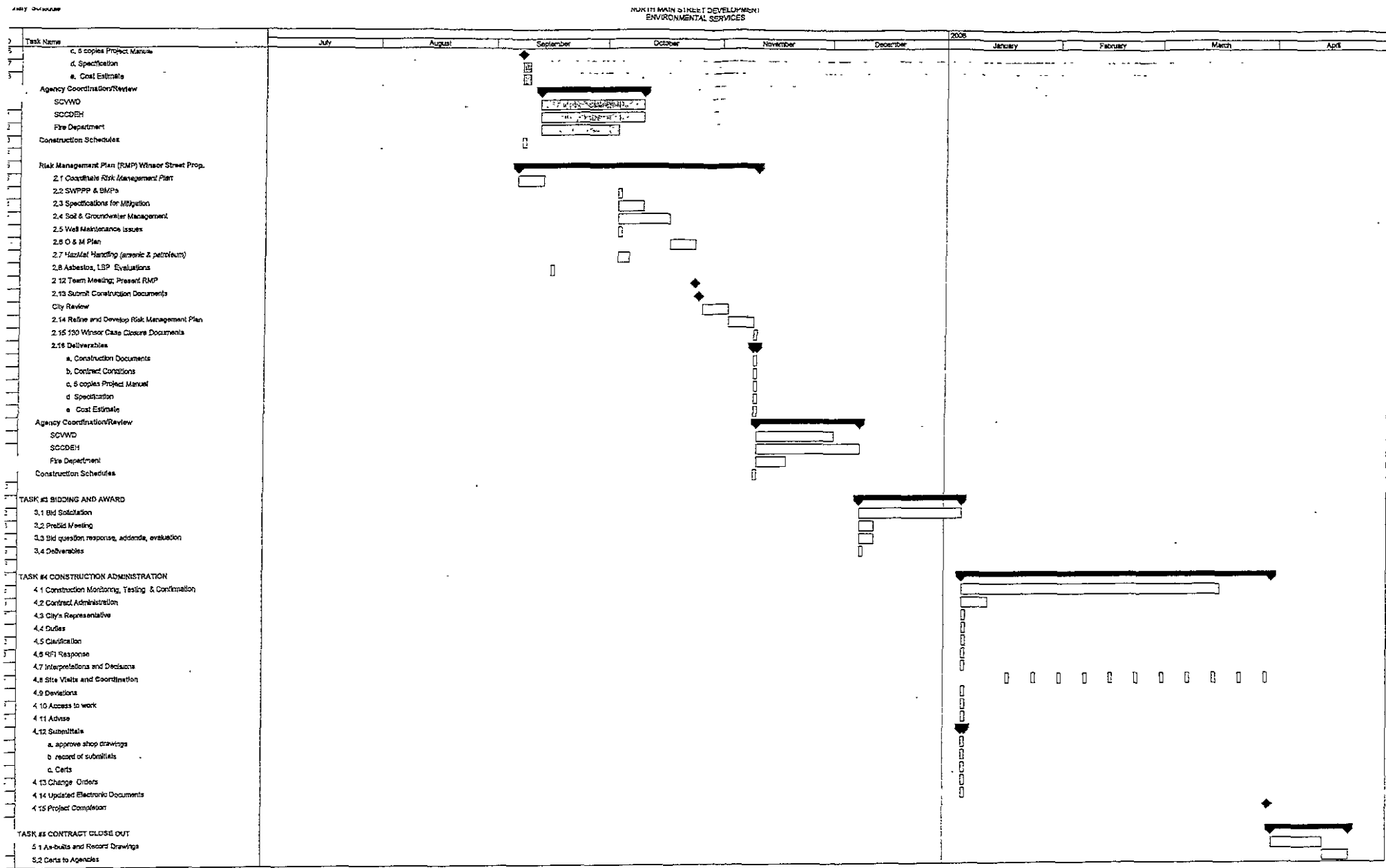
SCS has developed professional relationships with key Bay Area regulatory agency personnel during past projects. We take a firm technically based stance while negotiating with agency staff when regulations become "fuzzy". Our work is technically accurate, complete and professionally presented; regulatory agencies like and trust that approach. We have worked with every key environmental regulatory agency having jurisdiction over this project. Because of the strong relationships and trust our team has built with regulators, we are often able to obtain regulatory concurrence expeditiously.

Key agencies SCS has worked with include the Santa Clara County Department of Environmental Health, Santa Clara Valley Water District, SFBWQCB, California EPA - DTSC, and Bay Area Air Quality Management District.

CLOSURE

SCS appreciates the opportunity to submit this RFP. SCS has the qualifications to meet the City' needs on this project and we look forward to having the opportunity to be of service.





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EXHIBIT B

Compensation Manner and Amount, Reimbursable,
Estimated Payment Schedule, Hourly Rates

Environmental Consultants

6601 Koll Center Pkwy
Suite 140
Pleasanton, CA 94566

PH. 925-426-0707
FAX 925-426-0077
www.scsengineers.com

SCS ENGINEERS

June 20, 2005

Proposal No. 01083205

Ms. Mary Lavelle, City Clerk
City Clerks Office
City of Milpitas
City Engineer's Office
455 East Calaveras Blvd
Milpitas, CA 95035-5411

Subject: Milpitas North Main Street Development Project
Environmental Services Proposal Packet #2 --Fee Proposal

SCS Engineers (SCS) is pleased to present this cost proposal for the subject project. The scope of work is outlined in our Environmental Services Proposal, Packet #1-Sections 1 thru 5 dated June 20, 2005. The scope of work is limited to parcels 028-24-014, 028-24-015, 028-24-016, 028-24-017, 028-24-019, 028-24-020, 028-24-025, 028-24-026 and 22-08-003, as stated in the RFP.

Our costs are based on the information provided and broken down by task as shown on the attached Figure 1, Cost Schedule. It should be recognized that much of the scope and costing is yet to be developed and is dependent on what is encountered during future environmental surveys and investigations. We normally work on a time and expense basis with a not to exceed figure. However, in keeping with the proposal, Task ID Numbers 1 through 44 can be considered lump sum fixed fee for the scope of work outlined in our Environmental Services Proposal. Please accept the remaining as budget cost figures, which we will negotiate with you or provide on a time and expense basis as the scope of work becomes more defined. Our cost summary is as follows and we consider all costs to be negotiable:

<i>Task #</i>	<i>Description</i>	<i>Lump Sum Cost</i>	<i>Budget Cost</i>
1	Evaluations	\$115,967	-
2	Risk Management Plans	-	\$121,859
3	Bidding and Award	-	\$8,280
4	Construction Administration	-	\$83,128
5	Record Documents	-	\$6,680

We have reviewed the sample Environmental Services Agreement attached to the RFP and have the ability to meet the requirements stated therein. However, we take exception to the liquidated damages presented in paragraph 2.1 as much of our work is dependent on others, dependent on results of future investigations and out of our direct control. We understand that time is of the essence for this project and are fully committed to providing the resources needed to get the tasks completed expeditiously. We are willing to negotiate a reasonable liquidated damages clause that would be limited to items for which we have complete control.

SCS ENGINEERS**FEE SCHEDULE**

(Effective July 1, 2004, through December 31, 2005)

Rate/Hour

Project Director.....	170
Certified Industrial Hygienist.....	150
Senior Technical Manager.....	150
Project Manager.....	135
Senior Professional.....	115
Project Professional	95
Superintendent.....	90
Staff Professional.....	80
Project Administrator.....	70
Operator.....	70
Senior Engineering Technician.....	70
Designer/Drafter.....	70
Administrative/Secretarial.....	55
Technician.....	55
Laborer.....	50

General Terms

1. Rates for principals of the firm may be negotiated on a project-specific basis.
2. Scheduled rates are effective through December 31, 2005. Work performed thereafter is subject to a new Fee Schedule.
3. Scheduled labor rates include overhead, administration, and profit. Costs for outside consultants and subcontractors, and for job-related employee travel and subsistence, reproduction, telephone, equipment, and supplies are billed at actual cost plus a 15 percent administrative fee.
4. Charges for field equipment and instruments will be in accordance with SCS's Field Equipment Rental Rates Schedule in effect at the time the work is performed plus a 15 per-cent administrative fee. Vehicle mileage is invoiced at \$0.40 per mile for company autos and \$0.45 per mile for company trucks. Daily rates apply for long-term projects.
5. Invoices will be prepared monthly or more frequently for work in progress, unless otherwise agreed. Invoices are due and payable upon receipt. Invoices not paid within 30 days are subject to a service charge of 1.5 percent per month on the unpaid balance.
6. Payment of SCS invoices for services performed will not be contingent upon the client's receipt of payment from other parties, unless otherwise agreed in writing. Client agrees to pay legal costs, including attorney's fees, incurred by SCS in collecting any amounts past due and owing on client's accounts.
7. For special situations such as expert court testimony and limited consultation, hourly rates will be on an individually negotiated basis.

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CONSULTANT:
CONTRACT DATE:
CONTACT PERSON:

PROJECT NAME:
PROJECT NO:
ACCOUNT NO:

PO NO:

[illegible]

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EXHIBIT C
Personnel, The Professional Team

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EXHIBIT D

Certificate of Insurance, Certificate of Worker Compensation Insurance

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EXHIBIT E
Invoice of Claim Declaration

Invoice or Claim Declaration

I, [name of declarant], declare the following:

SCS Engineers has contracted with City of Milpitas and City of Milpitas Redevelopment Agency (City) for the Environmental Services for the North Main Street Development projects. I am authorized by my employer (SCS Engineers) to prepare the attached invoice or claim for compensation (in other words, for money and/or time extensions) to City regarding this project (dated _____, 200__, and requesting \$_____ and/or ____ additional working days), and I did prepare said attached claim. I am the most knowledgeable person at SCS Engineers regarding this claim.

I am aware that this claim is covered by law, including but not limited to California Penal Code section 72, Government Code sections 12650 *et seq.* (False Claims Act), and Business and Professions Code sections 17200 *et seq.* (Unfair Business Practices Act). I am aware that submission or certification of false claims, or other claims that violate law or the contract, may lead to fines, imprisonment, and/or other severe legal consequences for myself and/or [Consultant company name].

The attached claim is prepared and submitted in good faith, and to the best of my knowledge does not breach the contract between SCS Engineers and City for this project, does not violate any law, satisfies all provisions of the contract, only contains truthful and accurate supporting data, and only requests an amount that accurately reflects the adjustments to money and time for which I honestly and in good faith believe that City is responsible under its contract with SCS Engineers.

So that I could declare that the statements in this declaration and the attached claim were true and correct, while preparing this declaration and claim I consulted with others (for example, attorneys, consultants, or others who work for SCS Engineers) when necessary to assure myself that said statements were true and correct.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed _____, 200__, at _____, California.

[name of declarant]